NO. 84-724

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1984

TEXAS A & M UNIVERSITY, ET AL,

Appellants,

VS.

GAY STUDENT SERVICES, ET AL,

Appellees

On Appeal From The
United States Court Of Appeals
For The Fifth Circuit

RESPONSE TO MOTION TO DISQUALIFY COUNSEL FOR APPELLEES

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(713) 526-5235
State Bar No. 17674000

ATTORNEY FOR APPELLEES

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COMES NOW the Plaintiff-Appellees (hereinafter sometimes "Plaintiffs") and file this their response to the Defendant-Appellants' (hereinafter sometimes "Defendants") Motion to Disqualify Counsel For Appellees. In support thereof the Plaintiffs would show as follows:

I.

Since 1977 J. PATRICK WISEMAN has acted as lead counsel for the Plaintiffs in this action.* On October 1, 1984 Mr. Wiseman

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* All factual references are to the affidavit of Mr. J. Patrick Wiseman, attached.

joined the Office of the Attorney General of Texas as Chief of the State and County Affairs Division. Prior to undertaking this employment Mr. Wiseman's participation in this matter was fully disclosed to the Attorney General's Office. The Attorney General, as the Chief Legal Officer for the State assigned by State law with the administrative responsibility of protecting the State's interest in litigation [see, e.g., Baker v. Wade, 743 F.2d 236 (5th Cir. 1984)], can and has waived any conflict of interest which might have resulted by Mr. Wiseman's employment. Texas law recognizes that by the very nature of the Attorney General's work representation of multiple parties is inevitable, [see, e.g., Vernon's Ann. Tex. Stat., art. 6252-26, Sec. 3(a)] and thus the office has procedures in place to insulate those conflicts which do arise.

II.

Mr. Wiseman has been excluded from any legal or administrative responsibility for the representation of Texas A & M University in this matter. Nor does he have any line or administrative control over the assistant Attorney General who represented Texas A & M University until outside counsel was authorized for the university.

WHEREFORE, PREMISES CONSIDERED the Plaintiffs pray that this Court deny, in all things, the Defendants' Motion to Disqualify Counsel for Appellees.

Respectfully submitted,

LARRY SAUER
4803 Montrose, Suite 11
Houston, Texas 77006
(713) 526-5235
State Bar No. 17674000
ATTORNEY FOR APPELLEES

THE STATE OF TEXAS §

COUNTY OF HARRIS §

AFFIDAVIT OF MR. J. PATRICK WISEMAN

BEFORE ME, on this day personally appeared J. PATRICK WISEMAN, affiant, known to me to be the person whose name is subscribed to this affidavit, who after being duly sworn, stated:

"My name is J. PATRICK WISEMAN. I am over the age of eighteen (18) years and there is no legal impediment to my making this affidavit.

"Since 1977, I have acted as lead counsel for the Plaintiffs in Gay Student Services, et al v. Texas A & M University, et al. On October 1, 1984, I joined the Office of the Attorney General of Texas as Chief of the State and County Division. Prior to undertaking such employment I disclosed to the Attorney General my participation in the instant cause of action. Permission was granted by the Attorney General for my continued participation.

"I have been excluded from all legal and administrative responsibility or control of this cause of action. On information and belief, the Defendants have asserted that I have authority over the assistant Attorney General who formerly represented Texas A & M University and have custody of the State's G.S.S. file. These assertions are, as matters of object fact, false. First, Ms. Ann Kraatz

represented Texas A & M University until outside counsel was authorized. She is not and has not been in the State and County Division since my appointment. Ms. Kraatz, I am informed, has been with a sister division (Law Enforcement) since approximately 1980. Further, she has custody of whatever materials or documents that may have been retained by the Attorney General's office. I have no access whatsoever to these materials. I have no administrative authority over her division.

"I have not, either before or during my state employment, removed any portion of the Defendants' file.

"Further the affiant sayeth not."

J. PATRICK WISEMAN, AFFIANT

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 14 day of February, 1985.

NOTARY PUBLIC IN AND FOR
HARRIS COUNTY, T E X A S

MY COMMISSION EXPIRES:

2/12/86

[illegible]
Notary Public, State of Texas
My Commission Expires February 12, 1986
Bonded by L. Alexander [illegible], Lawyers Surety Corp.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Response to Motion to Disqualify Counsel for Appellees has been furnished to all counsel of record listed below by placing the same in the United States mail, certified, return receipt requested, this 1st day of August, 1985, in accordance with Sup. Ct. R. 28.

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